SECTION III—REMARKS

This amendment is submitted in response to the Office Action mailed October 13, 2004. No claims are amended herein, and claims 1-28 remain pending in the application. Applicant respectfully requests reconsideration of the application and allowance of all pending claims in view of the above amendments and the following remarks.

Claim Objections

The Examiner objected to claims 7, 8, 19 and 20, but indicated that these claims would be allowable if amended to overcome rejections under 35 U.S.C. § 112 and amended to include all the limitations of their base claims and any intervening claims.

As discussed below, Applicant believes that these objected claims, as currently written, are not indefinite and that the base claims from which these objected claims depend are patentable. Applicant therefore respectfully requests withdrawal of the objections.

Rejections Under 35 U.S.C. § 112

The Examiner rejected claims 6-8, 18-20 and 27 under 35 U.S.C. § 112, second paragraph, as indefinite for failing to particularly point out and claim the subject matter that Applicant regards as the invention. According to the Examiner, these claims are rendered indefinite by the use of the word "about."

Applicant respectfully traverses the Examiner's rejections. The Examiner cited MPEP § 2173.05(d) in support of the rejection, but that section deals with exemplary claim language (terms like "for example" and "such as"), and is therefore not on point. Applicant respectfully directs the Examiner's attention to MPEP § 2173.05(b)(A), which indicates that use of the term "about" is allowed and does not render a claim indefinite, particularly when the term is used as it is in the claims rejected by the Examiner. Pursuant to this section of the MPEP, Applicant respectfully requests withdrawal of the rejections.

Rejections Under 35 U.S.C. § 103

The Examiner rejected claims 1-5, 9-17 and 21-26 under 35 U.S.C § 103(a) as obvious in view of, and therefore unpatentable over, U.S. Patent No. 5,613,129 to Walsh ("Walsh") in view of U.S. Patent No. 6,735,629 to Cafarelli III *et al.* ("Cafarelli").

Applicant respectfully traverses the Examiner's rejections. To establish a *prima facie* case of obviousness, three criteria must be met: (1) the prior art references must teach or suggest all the claim limitations; (2) some suggestion or motivation to combine the references must be found in the prior art; and (3) there must be a reasonable expectation of success. MPEP § 2143. As explained below, Applicant respectfully submits that the Examiner has not established a *prima facie* case of obviousness.

Claim 1 recites a method combination including "monitoring an incoming network traffic load" and dynamically tuning an interrupt delay "in response to the incoming network traffic load," wherein dynamically tuning the interrupt delay includes increasing the interrupt delay in response to an increase in the incoming network traffic load, and decreasing the interrupt delay in response to a decrease in the incoming network traffic load. According to the Examiner, Walsh discloses nearly every element of this claim. The Examiner concedes that Walsh does not disclose a network traffic load, but alleges that Cafarelli discloses a network traffic load and concludes that it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to combine Walsh and Cafarelli to arrive at the present invention.

Applicant respectfully disagrees. Walsh does not, as the Examiner alleges, disclose a method including monitoring an incoming traffic load. Walsh instead discloses and teaches that the appropriate quantity to measure and monitor is the idle time of the system CPU (*see, e.g.*, col. 3, lines 6-16). Walsh does not disclose, teach or suggest that any incoming traffic load—whether from a network or not—should be monitored, or that any action can or should be taken in response to an incoming traffic load. Thus, even if the Examiner's characterization of Cafarelli is correct, the combination of Walsh and Cafarelli cannot obviate the present claim because when combined they do not disclose, teach or suggest a combination including "monitoring an incoming network traffic load" and dynamically tuning an interrupt delay "in response to the incoming network traffic load." Moreover, because Walsh does not teach a network load or any use of a network load there would be no motivation to combine Walsh with a reference such as Cafarelli. For these reasons, Applicant respectfully submits that Walsh and Cafarelli, whether alone or combined, cannot obviate the claim and respectfully request withdrawal of the rejection and allowance of the claim.

Regarding claims 2-5, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is also non-obvious. MPEP § 2143.03; *In re Fine*, 837 F.2d

1071 (Fed. Cir. 1988). As discussed above, claim 1 is in condition for allowance. Applicant respectfully submits that claims 2-5 are therefore allowable by virtue of their dependence on an allowable independent claim, as well as by virtue of the features recited therein. Applicant therefore respectfully requests withdrawal of the rejections and allowance of these claims.

Claim 9 recites a method combination including "monitoring an incoming network traffic load" and dynamically tuning an interrupt delay "in response to the incoming network traffic load," wherein dynamically tuning the interrupt delay includes increasing the interrupt delay when the incoming network traffic load is greater than an upper threshold, and decreasing the interrupt delay when the incoming network traffic load is less than a lower threshold. By analogy to the discussion above for claim 1, Applicant submits that Walsh and Cafarelli cannot obviate the claim and respectfully request withdrawal of the rejection and allowance of the claim.

Regarding claims 10-12, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is also non-obvious. MPEP § 2143.03; *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). As discussed above, claim 9 is in condition for allowance. Applicant respectfully submits that claims 10-12 are therefore allowable by virtue of their dependence on an allowable independent claim, as well as by virtue of the features recited therein. Applicant therefore respectfully requests withdrawal of the rejections and allowance of these claims.

Claim 13 recites an article of manufacture combination including a machine-readable medium that provides instructions which, when executed by a machine, cause the machine to perform operations including "monitoring an incoming network traffic load" and dynamically tuning an interrupt delay "in response to the incoming network traffic load," wherein dynamically tuning the interrupt delay includes increasing the interrupt delay in response to an increase in the incoming network traffic load, and decreasing the interrupt delay in response to a decrease in the incoming network traffic load. By analogy to the discussion above for claim 1, Applicant submits that Walsh and Cafarelli cannot obviate the claim and respectfully request withdrawal of the rejection and allowance of the claim.

Regarding claims 14-17, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is also non-obvious. MPEP § 2143.03; *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). As discussed above, claim 13 is in condition for allowance. Applicant respectfully submits that claims 14-17 are therefore allowable by virtue of their dependence on

an allowable independent claim, as well as by virtue of the features recited therein. Applicant therefore respectfully requests withdrawal of the rejections and allowance of these claims.

Claim 21 recites a computer system including a processor, a network adapter, and a device driver capable of being executed by the processor; and wherein the device driver comprises instructions which, when executed by the processor, cause the computer system to perform operations, the operations including "monitoring an incoming network traffic load from the network" and dynamically tuning an interrupt delay that precedes an interrupt generated by the network controller "in response to the incoming network traffic load," wherein dynamically tuning the interrupt delay includes increasing the interrupt delay in response to an increase in the incoming network traffic load, and decreasing the interrupt delay in response to a decrease in the incoming network traffic load. By analogy to the discussion above for claim 1, Applicant submits that Walsh and Cafarelli cannot obviate the claim and respectfully request withdrawal of the rejection and allowance of the claim.

Regarding claims 22-24, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is also non-obvious. MPEP § 2143.03; *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). As discussed above, claim 21 is in condition for allowance. Applicant respectfully submits that claims 22-24 are therefore allowable by virtue of their dependence on an allowable independent claim, as well as by virtue of the features recited therein. Applicant therefore respectfully requests withdrawal of the rejections and allowance of these claims.

Claim 25 recites a method combination including generating a monitoring input, "the monitoring input comprising a value corresponding to an incoming network traffic load," comparing the monitoring input with an upper threshold, and wherein the monitoring input is greater than the upper threshold, increasing the network adapter interrupt delay, and wherein the monitoring input is less than or equal to the upper threshold, and comparing the monitoring input with a lower threshold, and wherein the monitoring input is less than the lower threshold, decreasing the network adapter interrupt delay. By analogy to the discussion above for claim 1, Applicant submits that Walsh and Cafarelli cannot obviate the claim and respectfully request withdrawal of the rejection and allowance of the claim.

Regarding claim 26, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is also non-obvious. MPEP § 2143.03; *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). As discussed above, claim 25 is in condition for allowance. Applicant

respectfully submits that claim 26 is therefore allowable by virtue of its dependence on an allowable independent claim, as well as by virtue of the features recited therein. Applicant therefore respectfully requests withdrawal of the rejections and allowance of the claim.

Conclusion

Given the above amendments and accompanying remarks, all claims pending in the application are in condition for allowance. If the undersigned attorney has overlooked a teaching in any of the cited references that is relevant to allowance of the claims, the Examiner is requested to specifically point out where such teaching may be found. Further, if there are any informalities or questions that can be addressed via telephone, the Examiner is encouraged to contact the undersigned attorney at (206) 292-8600.

Charge Deposit Account

Please charge our Deposit Account No. 02-2666 for any additional fee(s) that may be due in this matter, and please credit the same deposit account for any overpayment.

Respectfully submitted,

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Date: 1-13-05

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